Petition

Supreme Court, U.S.
FILED
DEC 18 1981
ALEXANDER L. STEVAS,
CLERK

NO. 81-1150

In the Supreme Court of the United States

October Term, 1981

Sun Oil Company and Aquitaine Oil Company
Petitioners

VERSUS

Signal Oil and Gas Company,
The Louisiana Land & Exploration Co.,
Marathon Oil Company,
The Barge W-701
J. Ray McDermott & Company, Inc.
Williams-McWilliams Company,
Employers' Surplus Lines Insurance Company and
Employers' Liability Assurance Corporation,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

Does the Personal Contract Doctrine of the Limitation of Liability Act prevent a negligent shipowner who breaches its contract with an innocent party from limiting against a claim by that party?

Where a solely negligent shipowner was required by contract with an innocent party to provide insurance in an amount sufficient to pay all claims, can the Limitation of Liability Act be invoked by the shipowner's insurer to refuse to pay the full amount of the judgment?

When a negligent shipowner has failed to file for limitation of liability within six months in a multiple claims situation, is the shipowner's insurer entitled to a single claim fund under the Limitation Act, or should the multiple fund rule apply?

STATEMENT OF PARTIES

Pursuant to Rule 21.1(b) and Rule 28.1, counsel for petitioner certify that all the parties to this proceeding are named in the caption, and that petitioners, Sun Oil Company known as Sun Oil Company (Delaware) and Sun Exploration & Production Company is a subsidiary of Sun Company, Inc., and formerly an affiliate of Sun Oil Company of Pa., now known as Sun Refining & Marketing Company, and Aquitaine Oil Company has no parent corporation, affiliates, or nonwholly owned subsidiaries known to counsel.

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Petitioners Sun Oil Company and Aquitaine Oil Company (hereinafter referred to as Sun) join in the petition filed herein by J. Ray McDermott & Co., Inc. No. 81-1128, complaining of the decisions below (the United States District Court for the Eastern District Court of Louisiana, 468 F. Supp. 802 and the opinion of the Fifth Circuit Court of Appeals, 654 F.2d 1164, copies of which

are attached to the McDermott Appendix) which have allowed Williams-McWilliams Co. and its "umbrella" insuror to escape the payment in full of the claims of Sun and McDermott against said parties. The recovery allowed Sun amounts to $21,781.38, less than the amount which it is obligated to pay SLAM, after deducting the indemnity recovery allowed against McDermott.

The Fifth Circuit Court of Appeals denied application filed for rehearing by McDermott and other parties on October 19, 1981 and granted a stay of the mandate until December 23, 1981.

CONCLUSION

Sun adopts by reference the entire Petition for Writ of Certiorari, with attachments filed herein by McDermott and petitions this Court to grant the Writ of Certiorari and to eventually allow the relief prayed for herein by McDermott and Sun.

Respectfully submitted,

Ernest L. O'Bannon
P. A. Bienvenu

CERTIFICATE

I hereby certify that three copies of the above and foregoing have been sent to each opposing counsel of record, by depositing same in U.S. Mail, postage prepaid, this 21th day of December, 1981.

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Attorneys for SLAM

I further certify that all parties required to be served have been served.

Ernest L. O'Bannon
P. A. Bienvenu

Opposition

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OPPOSITION TO PETITION FOR WRIT

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RESTATEMENT OF THE ISSUES PRESENTED

I.

The Court of Appeals held that the case, on its facts, did not fall within the scope of the Personal Contract Doctrine.

The real issue is, therefore:

> Are the factual findings of the lower court clearly erroneous within the meaning of Federal Rule of Civil Procedure 52(a)?

II.

Does the rule of implied warranty of workmanlike performance deprive a shipowner of its right to seek Limitation of Liability?

III.

When a shipowner is granted the right to limit its liability under the Limitation of Liability Act, what are the obligations of the insurers on its

Umbrella policy, when the District Court has no jurisdiction over those insurers under the Louisiana Direct Action Statute?

IV.

When there is a single claim for physical damage to a pipeline (with different percentages of ownership interest), does pleading Limitation of Liability in the Answer to Plaintiffs' Complaint and in Answer to Cross-Claims of Co-Defendants, create multiple limitation funds?

STATEMENT OF PARTIES

Pursuant to Rule 21.1(b) and Rule 28.1, counsel for Respondents point out that all the parties to the proceeding are not correctly named in the captions appearing in the petition of Petitioners Sun Oil Company and Aquitaine Oil Company, but that all the parties to this proceeding are correctly named in the caption of Respondents' opposition.

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ARGUMENT-CONCLUSION

Respondents adopt by reference the arguments contained in their opposition to the Petition of J. Ray McDermott & Company, Inc., No. 81-1128

Respectfully submitted,

BRUNSWICK G. DEUTSCH
Counsel for Respondents

DEUTSCH, KERRIGAN & STILES
BERTRAND M. CASS, JR.
of Counsel

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Opposition have been forwarded to each opposing counsel of record by depositing same in the United States Mail, first-class postage prepaid, this 19th day of January, 1982.

BRUNSWICK G. DEUTSCH